

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

AIRCRAFT FUELING SYSTEMS, INC., )  
Plaintiff, )  
v. ) Case No. 08-CV-414-GKF-FHM  
SOUTHWEST AIRLINES CO., )  
Defendant. )

## **OPINION AND ORDER**

Before the court is plaintiff Aircraft Fueling Systems, Inc.’s (“AFS”) Verified Motion to Extend Scheduling Order Deadlines. [Dkt. #197]. Plaintiff seeks to reopen discovery and extend all remaining deadlines on the basis of the late production by defendant, Southwest Airlines Co. (“Southwest”), of documents plaintiff contends have a “significant bearing on the merits of this case and should have been produced years earlier.” [Id. at 1].<sup>1</sup> Plaintiff contends the newly produced documents “call into question” assertions made by Southwest in connection with its summary judgment motion.

The specific document identified by AFS is an “Audit Finding Form” in which, AFS contends, Southwest “recognize[d] that it was required to pay project management fees for periods between phases or while AFS was required to remain mobilized to oversee projects.” [Id.]. Thus, AFS asserts, it was entitled to project management fees for the Houston project over

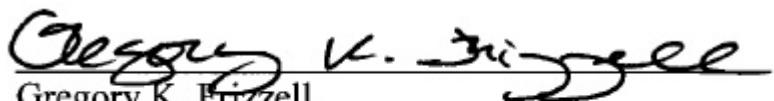
<sup>1</sup> Southwest contends the late production consisted of approximately 800 documents. [Dkt. #206 at 3]. AFS characterizes the production as “more than 4,000 pages.” [Dkt. #197 at 1]. In any event, it appears the production filled one and one-half boxes [Dkt. #206 at 4], and AFS concedes many of the documents had been previously produced. [Dkt. #197 at 3].

and above those approved under the parties' agreement and change orders. [Dkt. #197 at 11]. Southwest disputes AFS's conclusion.<sup>2</sup> It contends, however, that AFS had both a draft Audit Report and final Audit Report containing language virtually identical to the language in the Audit Finding Form in its possession by November 2008, well in advance of Southwest's September 14, 2009, summary judgment motion. [Dkt. #206 at 16-17 and Ex. F at pp. 13, 16; Dkt. #40].

Having reviewed the documents at issue, the court concludes the previously-produced documents apprised AFS of substantially the same information contained in the Audit Finding Form. The fact that its former attorney chose not to advance such an argument at summary judgment is not grounds for an extension of discovery and/or dispositive motion practice.

Plaintiff's Motion to Extend Scheduling Order Deadlines [Dkt. #197] is denied.

ENTERED this 25<sup>th</sup> day of October, 2011.

  
Gregory K. Frizzell  
United States District Judge  
Northern District of Oklahoma

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<sup>2</sup> Southwest asserts it never agreed to pay project management fees in addition to those approved under the parties' agreement and change orders. [Dkt. #206 at 17]. It contends that because of project delays, it simply agreed to a change order extending the project management payments to October 2003—the month specifically addressed in the Audit Finding Form. [*Id.*].